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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re ANNA URBINA,
on Habeas Corpus.

A113406

(San Francisco County
Super. Ct. No. 194373)

BY THE COURT*:

Petitioner Anna Urbina seeks relief from her trial counsel's failure to file a timely notice of appeal. We will grant her petition for writ of habeas corpus, permitting her to pursue her appeal.

BACKGROUND

Petitioner was convicted of causing injury to an elder adult (Pen. Code, § 368¹, subd. (b)(1)), assault by force likely to cause great bodily injury (§ 245, subd. (a)(1)), and vandalism (§ 594, subd. (a)). After the trial court sentenced petitioner to state prison on April 25, 2005, petitioner asked her trial counsel to file a notice of appeal. Counsel failed to file a timely notice of appeal. Counsel attempted to file a late notice of appeal on January 4, 2006, but the clerk of the superior court would not file it.

* Ruvolo, P.J., Sepulveda, J., Rivera, J.

¹ All further undesignated statutory references are to the Penal Code.

Petitioner filed her petition for writ of habeas corpus in this court seeking to have her notice of appeal treated as timely filed. The Attorney General has replied to our request for an informal response by stating he does not oppose the granting of the petition and that issuance of an order to show cause is not necessary. (See *People v. Romero* (1994) 8 Cal.4th 728, 740, fn. 7.)

DISCUSSION

Petitioner contends she is entitled to relief because her trial counsel provided ineffective assistance when he failed to file her notice of appeal. (See *Roe v. Flores-Ortega* (2000) 528 U.S. 470, 484-485.) She also contends her appeal should be considered timely under the doctrine of constructive filing as announced by the California Supreme Court in *In re Benoit* (1973) 10 Cal.3d 72.

Trial counsel has filed a declaration in support of the petition in which he explains he assumed the duty to file a notice of appeal for petitioner, but that he failed to discharge the duty through inadvertence. Petitioner twice inquired as to the status of her appeal, but it was not until the second inquiry that counsel discovered his error.

When a defendant has made arrangements with his or her attorney to file a timely notice of appeal, the appeal will be deemed constructively filed and the time requirements for filing an appeal met, unless the defendant displayed no diligence in seeing that the attorney has discharged the responsibility. (*In re Benoit, supra*, 10 Cal.3d at pp. 86-89.)

Petitioner has demonstrated both diligence and that she is entitled to relief.

DISPOSITION

The petition for writ of habeas corpus is granted. The Clerk of San Francisco County Superior Court is directed to file the notice of appeal received January 4, 2006, in *People v. Urbina*, Case No. 194373, and to prepare the record on appeal.